

Remarks

The present paper is filed in response to the Office action dated July 10, 1007. A Petition to Revive the application under 37 CFR §1.137(b) is included in the present Response. It is Applicant assertion that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional.

As a result of a previous Restriction Requirement, claims 1-18 and 24-26 are withdrawn as non-elected claims. The elected claim Group included claims 19-23. In the present paper, claim 19 is amended, claims 20-23 are canceled, and new claims 24-51 are added. All claim cancellations are made without prejudice or waiver.

Claim amendments

All claim amendments are supported by the specification and claims as originally filed.

Support for claim 19 as amended can be found at least on claim 19 as originally filed.

Support for claims 27 and 28 can be found at least on page 10, lines 31-34 in the specification as filed.

Support for claim 29 can be found at least on claim 3 as originally filed.

Support for claim 30 can be found at least on page 12 lines 33-37.

Support for claim 31 can be found at least on page 15 lines 21-23.

Support for claim 32 can be found at least on page 15 lines 21-23.

Support for claim 33 can be found at least on page 11 lines 16-23.

Support for claim 34 can be found at least on page 14 lines 12-17.

Support for claim 35 can be found at least on page 14 lines 12-17.

Support for claim 36 can be found at least on claim 19 as originally filed.

Support for claim 37 can be found at least on claim 19 as originally filed and on claim 16 as originally filed.

Support for claim 38 can be found at least on page 5 line 34-page 6 line 2.

Support for claim 39 can be found at least one page 6 lines 3-4.

Support for claim 40 can be found at least on page 17 lines 20-35.

Support for claim 41 can be found at least on page 8 lines 16-20.

Support for claims 42-44 can be found at least on page 14 lines 1-4.

Support for claim 45 can be found at least on page 14 lines 12-17.

Support for claim 46 can be found at least on page 14 lines 12-17.

Support for claim 47 can be found at least on claim 19 as originally filed.

Support for claim 48 can be found at least on claim 19 as originally filed and on page 11 lines 16-23.

Support for claim 49 can be found at least on page 12 lines 15-24.

Support for claim 50 can be found at least on page 11 lines 16-23.

Support for claim 51 can be found at least on page 11 lines 24-30.

Priority

Applicant acknowledges the PTO's assertion of a benefit date of November 4, 2002.

Office action, page 2.

Claim objections

In the Office action, the PTO objects to claims 19, 21-22 for informalities. Applicant requests reconsideration and withdrawal of the claim objections in view of the present claim amendments. The amendments and claim cancellations either address these objections with corrections, or render the objections moot.

Claim rejections under 35 USC §112, second paragraph

In the Office action, the PTO rejects claims 19-23 as allegedly indefinite. Applicant requests reconsideration and withdrawal of the rejection, in view of the present amendments.

In the Office action, the PTO rejects claim 19 for recitation of “substantial.” Office action, page 3. Without conceding the merits of the PTO’s position, Applicant asserts that this reason for rejection is moot in view of the amendment of claim 19.

In the Office action, the PTO rejects claim 19 for recitation of “incubating the biological sample in the presence of a reagent at a pH between about pH 1.0 and 6.0.” Office action, page 3. The PTO’s rejection is based upon its assertion that it is known in the art that a pH of 1.0 is strongly acidic, and it would be unclear how a biological sample would not be solubilized without substantial acid hydrolysis at a pH of 1.0. Office Action, page 3. Applicant requests reconsideration and withdrawal of the rejection, because 35 USC §112 second paragraph is directed to definiteness. Applicant asserts that “a pH between about pH 1.0 and 6.0” is self-evidently definite, in that a person of skill in the art would understand the meaning of “a pH between about 1.0 and 6.0.” Whether a biological sample could be solubilized at pH 1.0 without inducing substantial acid hydrolysis has no bearing on the definiteness of the claim. Applicant, therefore, requests reconsideration and withdrawal of this rejection under 35 USC §112 second paragraph.

The PTO also rejects claim 19 for reciting “precipitating one or more proteins in the extract to thereby precipitate at least the solubilized proteinaceous macromolecules and resuspending the precipitated proteinaceous macromolecule,” and interprets the phrase as implying that it is the proteins in the extract that precipitate the solubilized proteinaceous macromolecule. Office action, page 3. Without conceding the merits of the PTO’s position, Applicant asserts that this reason for rejection is moot in view of the amendment of claim 19.

In the Office action, the PTO rejects claim 19 as indefinite for reciting “conditions sufficient to resolve the proteinaceous macromolecule from other macromolecules present in the

biological sample.” Office Action, page 3. Without conceding the merits of the PTO’s position, Applicant asserts that this reason for rejection is moot in view of the amendment of claim 19.

The PTO includes claims 22-23 in its rejection under 35 USC §112 second paragraph. This rejection is moot because of the cancellation of these claims.

In summary, therefore, Applicant respectfully requests withdrawal of all claim rejections under 35 USC §112 second paragraph.

Claim rejections under 35 USC §102

In the Office action, the PTO rejects claims 19-21 as allegedly anticipated by DeWitt (May 2002 Journal of Food Science 67(9): 3335-3341; IDS) (“DeWitt”). Office Action, page 4. Applicant requests reconsideration and withdrawal of the rejection, because DeWitt does not teach all elements of the present claims.

For a reference to anticipate a claim, it must teach all elements of the claim. In this case, DeWitt fails to teach at least the elements of forming a mixture comprising a buffer, a chaotropic agent and a biological sample comprising at least one proteinaceous macromolecule, in that DeWitt does not teach at least the element of a chaotropic agent.

The PTO also rejects claims 19-21 as allegedly anticipated by Sato et al., (1977 European Journal of Biochemistry 78: 557-567, IDS) (“Sato”). Applicant requests reconsideration and withdrawal of the rejection, because Sato does not teach all elements of the present claims. In the Office Action, the PTO cites Sato for teaching incubating E. coli cells with lysozyme and disrupting by sonication and centrifugation, and specifically refers to page 558 for support. Office Action, pages 4-5. However, Sato does not teach at least the elements of a pH between about pH 1.0 and about pH 6.0. To the contrary, Sato teaches incubating cells with lysozyme “dissolved in 0.1 M EDTA (pH 7.5)” and washing cells “in 30 mM Tris-HCl (pH 8.1), and suspend[ing] in 0.2 ml of the same buffer containing 20% w/v sucrose.” Sato, page 558. Because neither pH 7.5 nor pH 8.1 are between about pH 1.0 and about pH 6.0, Sato does not anticipate the claims.

Because the PTO has not shown that either DeWitt or Sato anticipate the claims Applicant respectfully requests reconsideration and withdrawal of the rejections under 35 USC §102.

Claim rejections under 35 USC §103

In the Office action, the PTO rejects claims 22-23 as obvious over DeWitt, *supra*, in view of Wall (US Patent application 20030168585) ("Wall"), under 35 USC §103(a). Office action, page 5. Applicant requests reconsideration and withdrawal of the rejection, because of the present claim amendments.

Without conceding the merits of the PTO's grounds for the rejection under 35 USC §103, including whether Wall is a proper reference that the PTO can cite as prior art, Applicant contends that the rejection is rendered moot by the cancellation of claims 22-23.

Therefore, Applicant respectfully requests reconsideration and withdrawal of the rejection under 35 USC §103.

Conclusion

As it is believed the application is in a condition for allowance, Applicant requests prompt and favorable action.

Applicant requests that the Examiner contact the undersigned attorney by telephone if a discussion would be of benefit toward gaining a rapid allowance of the claims. Applicant encloses herein a petition fee under 37 CFR §1.17(m) for the Petition to Revive, a fee for reply to the Office action in the fifth month under 37 CFR §1.17(a)(5), and a fee for additional claims in excess of 20 under 37 CFR §1.16(i). The Commissioner is hereby authorized to deduct any deficiency or credit any overpayment to Deposit Account No. 19-3140.

Dated: February 15, 2008

Respectfully submitted,

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